

CALIFORNIA STATE PERSONNEL BOARD MEETING¹

801 Capitol Mall
Sacramento, California

Public Session Location – 801 Capitol Mall

Sacramento, California, Room 150
Teleconference – 320 West 4th Street²
Los Angeles, California, Suite 620

Closed Session Location – Room 141

Teleconference – 320 West 4th Street
Los Angeles, California Suite 620

SUMMARY MINUTES - MARCH 8-9, 2005

¹ Sign Language Interpreter would have been provided for Board Meeting upon request - contact Secretariat at (916) 653-0429, or CALNET 453-0429, TDD (916) 654-2360.

²Pursuant to Government Code section 11123, a teleconference location would have been conducted for this meeting at 320 West 4th Street, Los Angeles, California.

TWO-DAY FULL BOARD MEETING MINUTES³

DAY ONE - MARCH 8, 2005

1. ROLL CALL

Members Present:

William Elkins, President
Maeley Tom, Vice President
Ron Alvarado, Member
Sean Harrigan, Member
Anne Sheehan, Member

2. REPORT OF THE EXECUTIVE OFFICER - Floyd D. Shimomura

- A. Secretary of State Shelley's resignation was effective on Friday, March 4, 2005. The Senate will hold confirmation hearings on March 16, 2005, for Mr. Shelley's replacement.
- B. Cathy Mitchell, the undersecretary of state, is serving as the interim Secretary of State.
- C. Mary Fernandez was introduced as the new Chief of SPB's Administrative Services Division.
- D. A presentation on CPR's "performanced based management" will be given on April 5-6, 2005 meeting in Los Angeles. It will last about one and one-half hours.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

AVRIL ADAMS V. WEYERS et al. - State Personnel Board prevailed in its Motion for Summary Judgment on Ms. Adams' claim against Dr. Weyers.

SCIF V. SPB/CSEA – Judge Ohanesian of the Sacramento Superior Court upheld SPB's disapproval of SCIF's contracts. The Board's decision found that: (1) SPB had jurisdiction to review SCIF's contract; and (2) the hiring freeze didn't offer sufficient jurisdiction for the contracting. Judge Ohanesian issued a tentative ruling upholding the Board on both issues and denying the writ petition. After oral argument, she adopted the tentative as her final decision. In her tentative, she calls SPB's decision "well-reasoned and consistent with the general reasoning in PECG v. Caltrans."

³ The Minutes for the Board can be obtained at the following internet address:
<http://www.spb.ca.gov/calendar.htm>

CASE V. DIR – CASE filed suit against DIR seeking to compel DIR to release the names and ranks of people on the eligible list for worker's compensation judge. SPB has not been named in the suit. DIR's position is based on an SPB regulation. This is the second suit brought by CASE on this issue. SPB was named and appeared in other suit and DIR and SPB prevailed in that case.

Terhune (CDC) v. State Personnel Board (Villanueva) – one of precedent decisions. Oral argument set in Court of Appeal, 5th Appellate district for March 15 at 1:30.

4. PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS) REPORT - Ron Alvarado

- Rob Feckner unanimously elected President of the Board of Administration
- Robert Carlson unanimously elected Vice President of the Board
- Marjorie Berte was introduced as newest Board Member
- Ron Alvarado asked to serve on:
 1. Investment Committee (of the whole)
 2. Benefits and Program Administration
 3. Health Benefits
 4. R Street Subcommittee
- Preparing to enter into health benefits negotiations
- Hospital Reimbursement Project and High Cost Hospitals Program previewed
- Board voted to oppose AVA 5 and ACA1x (Richland), Defined Contribution legislation
- Fund closed 2004 at a record high value of \$182.9BN
- For the year, this mark is 13.5% return on investment
 1. International Equities gained 21.6%
 2. Domestic Equities gained 11.7%
 3. Real Estate gained 18.9% (Specialized eared 24.6%)
- Fund remains under-funded by about 15% (at about 85% actuarially)
- Employer contribution of about \$2.6BN for 2005 (about \$200MN in 2000)
 1. All sides interest in rate smoothing

5. NEW BUSINESS

NONE

6. REPORT ON LEGISLATION - Sherry Hicks

AB 94 (HAYNES)

Among other things, this bill would require each state agency, board, commission, department, or office to prepare and provide a report to the Senate Committee on Rules, the Assembly Committee on Rules, and to each member of the Senate

Committee on Budget and Fiscal Review and the Assembly Committee on Budget on the financial activities of the agency, board, commission, department, or office for the 2003-04 and 2004-05 fiscal years no later than January 15, 2006, and for each subsequent fiscal year by January 15 of the following year.

Approved NEUTRAL Position

AB 277 (MOUNTJOY)

This bill makes permanent the provisions of Government Code Section 11126 that authorize state bodies to hold closed sessions to consider matters posing a threat of criminal or terrorist activity against state buildings or property.

Approved SUPPORT Position

AB 297 (YEE)

This bill would specify that a current patient of a facility operated by the state Department of Mental Health (DMH) cannot file charges against a state employee, but rather must use the grievance processes of the DMH.

Approved Sponsorship and SUPPORT position

7. PERSONNEL SELECTION ANALYST CERTIFICATE PRESENTATION – George Steinert

Libby Beall
Diana Figueroa
Deborah Gallegos
Noreen Giron
Cheryl Hernandez

Marie Hren
Jeannette Santo
Flariba Shahmirzadi
Terri Trejo
Dana Watson

8. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial.
[Government Code sections 11126(e)(1) and 18653.]

State Personnel Board v. Department of Personnel Administration,
California Supreme Court Case No. S119498.

State Personnel Board v. California State Employees Association,
California Supreme Court Case No. S122058.

Connerly v. State Personnel Board, California Supreme Court
Case No. S125502.

International Union of Operating Engineers v. State Personnel Board,
Public Employment Relations Board (PERB) Case No. SA-CE-1295-S.

State Compensation Ins. Fund v. State Personnel Board/CSEA,
Sacramento Superior Court No. 04CS00049.

9. RECOMMENDATIONS TO THE LEGISLATURE

Deliberations on recommendations to the legislature.
[Government Code section 18653.]

10. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor. [Government Code section 18653.]

11. THE CALIFORNIA PERFORMANCE REVIEW (CPR) UPDATE

The CPR was established to examine executive branch reorganization, program performance assessment, budgeting, improved services and productivity, and acquisition reform. This discussion focused on the consolidation of SPB and DPA and the outstanding issues that require resolution.

Speakers Present:

Karen Coffee, State Personnel Board
Floyd Shimomura, Executive Officer

Introduced: Terry Silva, Manager, Test Validation, Construction and Training
Roz Brooks, Staff Services Manager II

- 12. HEARING** - State Personnel Board staff proposed to amend regulations for pre-employment, psychological screening of peace officer candidates which would reorganize, revise, and update terminology to include a new definition of "qualified professional" in alignment with changes recently made to law, provide a more accurate and complete description of psychological screening standards and procedures, and add references to relevant laws.

Speakers present:

Laura Aguilera, Assistant Executive Officer, California State Personnel Board
Dr. Sherrill Leake, State Psychological Officer, California State Personnel Board
Elizabeth Montoya, Staff, California State Personnel Board

VOTE: The Board adopted Sections 172.4 through 172.10 of Title 2, California Code of Regulations (2CCR) with minor revisions.
Elkins, Tom, Alvarado, Harrigan, Sheehan - Aye

13. COOPERATIVE PERSONNEL SERVICES (CPS) BRIEFING

Representatives of Cooperative Personnel Services and the State Personnel Board attended to discuss the history of CPS and CPS's proposed purchase of a private company.

Speakers Present:

Jerry Greenwell, Chief Executive Officer, Cooperative Personnel Service
Harriet Steiner, McDonough, Holland and Allen
Floyd Shimomura, Executive Officer, State Personnel Board
Karen Brandt, Senior Staff Counsel, State Personnel Board

No Action

14. ORAL ARGUMENT

Oral argument in the matter of **DON DOWLING**, Case No. 04-1482A and **ROGER HANSON**, Case No. 04-1523A

Speakers Present:

Terry Slover, representing the Department of Developmental Services
Linda Kelly, representing the appellant
Jolie Poper, representing the appellant

15. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

Staff approved the following:

- (a) The Bureau of State Audits proposes to revise the Minimum Qualifications for the Auditor, Bureau of State Audits Series Specification to increase the candidate pool; revise alternative range 339; and abolish the class of Auditor, Bureau of State Audits which is no longer utilized.

ACTION: Noted

16. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

This section of the Agenda serves to inform interested individuals and departments of proposed and approved CEA position actions.

The first section lists position actions that have been proposed and are currently under consideration.

Any parties having concerns with the merits of a proposed CEA position action should submit their concerns in writing to the Classification and Compensation Division of the Department of Personnel Administration, the Merit Employment and Technical Resources Division of the State Personnel Board, and the department proposing the action.

To assure adequate time to consider objections to a CEA position action, issues should be presented immediately upon receipt of the State Personnel Board Agenda in which the proposed position action is noticed as being under consideration, and generally no later than a week to ten days after its publication.

In cases where a merit issue has been raised regarding a proposed CEA position action and the dispute cannot be resolved, a hearing before the five-member Board may be scheduled. If no merit issues are raised regarding a proposed CEA position action, and it is approved by the State Personnel Board, the action becomes effective without further action by the Board.

The second section of this portion of the Agenda reports those position actions that have been approved. They are effective as of the date they were approved by the Executive Officer of the State Personnel Board.

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

CHIEF COUNSEL

The Department of General Services proposes to allocate the above position to the CEA category. The Chief Counsel drafts policy for the Deputy Director of Legal Affairs in the Executive Office impacting all state agencies in the areas of procuring services through contracting and other contracting issues.

ASSISTANT DIVISION CHIEF, MEDI-CAL MANAGED CARE DIVISION

The Department of Health Services proposes to allocate the above position to the CEA category. The Assistant Division Chief, in conjunction with the Division Chief, is responsible for the overall policy development and implementation of the MMCD's Medi-Cal Managed Care monitoring and evaluation efforts.

CHIEF COUNSEL

The Department of Mental Health proposes to allocate the above position to the CEA category. The Chief Counsel is the primary legal advisor and spokesperson on the many and complex issues facing the Department of Mental Health.

ACTION: Noted

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

DIRECTOR, STRATEGY PLANNING & LABOR LIAISON

The Department of Insurance's request to allocate the above position to the CEA category has been disapproved effective December 31, 2004.

CHIEF, INFORMATION OFFICER

The Victim Compensation and Government Claims Board's request to allocate the above position to the CEA category has been disapproved effective January 20, 2005.

DEPUTY COMMISSIONER, OFFICE OF COMMUNICATIONS & PRESS RELATIONS

The Department of Insurance's request to allocate the above position to the CEA category has been disapproved effective January 20, 2005.

PROJECT MANAGER, PENSION SYSTEM REPLACEMENT

The California Public Employees' Retirement System's request to allocate the above position to the CEA category has been approved effective February 14, 2005, for a period of twenty four months.

CHIEF, PRODUCTION AND OPERATIONS MANAGEMENT DIVISION

The Employment Development Department's request to allocate the above position to the CEA category has been approved effective February 14, 2005.

DEPUTY COMMISSIONER, ENFORCEMENT BRANCH

The Department of Insurance's request to allocate the above position to the CEA category has been approved effective February 15, 2005.

CHIEF, INVESTIGATION DIVISION

The Department of Insurance's request to allocate the above position to the CEA category has been approved effective February 15, 2005.

ACTION: Noted

17. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, & OTHER APPEALS

Deliberations to consider matter submitted at prior hearing. [Government Code sections 11126(d), 18653.]

18. BOARD ACTIONS - (See Minutes - Page 26)

These items have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting. This list does not include evidentiary cases, as those cases are listed separately by category on this agenda under Evidentiary Cases.

19. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

A D J O U R N M E N T

20. EVIDENTIARY CASES

The Board Administrative Law Judges conducted evidentiary hearings in appeals that included, but were not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

A. BOARD CASES SUBMITTED

These items have been taken under submission by the State Personnel Board at a prior meeting. Cases that are before the Board for vote will be provided under separate cover.

On March 8, 2005, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

DANNY BOYD, CASE NO. 03-1537PA

Appeal from dismissal

CLASSIFICATION: Youth Correctional Officer

DEPARTMENT: Department of Youth Authority

ACTION: The Board adopted a decision revoking the appellant's dismissal and awarding back pay, interest and benefits.

JENNIFER CADY, CASE NO. 03-3390EA

Appeal from denial of request for reasonable accommodation

CLASSIFICATION: Deputy Attorney General IV

DEPARTMENT: Department of Justice

ACTION: The Board adopted a decision granting the appellant's appeal from denial of request for reasonable accommodation.

SHARON COHEN, CASE NO. 03-3389EA

Appeal from denial of request for reasonable accommodation

CLASSIFICATION: Deputy Attorney General IV

DEPARTMENT: Department of Justice

ACTION: The Board adopted granting appellant's appeal from denial of request for reasonable accommodation.

JOHN A. CRUZ, CASE NO. 04-1376A

Appeal from 60-calendar-days suspension

CLASSIFICATION: Automotive Equipment Operator I

DEPARTMENT: California Department of Veterans Affairs

No Action

NESSLIN CRUZ, CASE NO. 03-1854A

Appeal from ten-work-days suspension

CLASSIFICATION: Employment Program Representative
(Permanent/Intermittent)

DEPARTMENT: Employment Development Department

No Action

JOHN FLORES, CASE NO. 03-2588EA

Appeal of retaliation

CLASSIFICATION: Hospital Police Officer I

DEPARTMENT: Department of Mental Health

ACTION: The Board adopted a decision issuing a cease and desist order, but denying appellant's request for promotion and compensatory damages.

HAJI JAMEEL, CASE NO. 04-0330A

Appeal from dismissal

CLASSIFICATION: Supervising Transportation Engineer

DEPARTMENT: California Public Utilities Commission

No Action

JOE W. JORDAN, CASE NO. 04-0393A

Appeal from dismissal

CLASSIFICATION: Youth Correctional Counselor

DEPARTMENT: Department of Youth Authority

No Action

SAMUEL SWEENEY, CASE NO. 04-0794A

Appeal from 20-calendar-days suspension

CLASSIFICATION: Correctional Officer

DEPARTMENT: Department of Corrections, Institution for Men – Chino

No Action

B. CASES PENDING

ORAL ARGUMENTS

These cases were on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

On March 8, 2005, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

**DON DOWLING, CASE NO. 04-1482A AND
ROGER HANSON, CASE NO. 04-1523A**

Appeals from dismissal

CLASSIFICATION: Peace Officer I, Developmental Center

DEPARTMENT: Department of Developmental Services

ACTION: Submitted

C. CHIEF COUNSEL RESOLUTIONS

On March 8, 2005, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

CRAIG SCOTT, CASE NO. 04-1516, request for orders to show cause

ACTION: The Board adopted a resolution denying the appellant's request for an order to show cause.

GEORGE LATHROP, CASE NO. 01-0684, request for orders to show cause

ACTION: Withdrawn

KEVIN D. HICKS, CASE NO. 03-3183, resolution revoking the Board's prior decision of October 5, 2004, withholding appellant from consideration for employment as a Correctional Officer. In this resolution, the Department of Corrections is directed to immediately place appellant's name on its current eligibility list for the classification of Correctional Officer.

ACTION: The Board adopted a resolution vacating its prior decision and directing that appellant's name be placed on eligibility list.

ELVIA ARQUELLES, CASE NO. 03-1079, resolution modifying the proposed decision of the ALJ

ACTION: The Board adopted a resolution authorizing clarification that adverse action was amended at hearing.

COURT REMANDS

This case has been remanded to the Board by the court for further Board action.

On March 8, 2005, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

THALVAIPALAYAM SOUNDARAJAN, CASE NO. 02-1953, court remand
ACTION: Withdrawn

STIPULATIONS

These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

On March 8, 2005. the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

MICHAEL GARABEDIAN, CASE NO. 04-1394

Seeking approval of settlement agreement in the position of Staff Counsel with the Department of Conservation

ACTION: The Board adopted a resolution approving settlement agreement.

XIAOMEI MA, CASE NO. 03-2251

Seeking retroactive promotion from the position of Associated Industrial Hygienist to Senior Industrial Hygienist with the Department of Toxic Substances Control and settlement of merit issue complaint.

ACTION: The Board adopted a resolution approving settlement agreement and backdating promotion.

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

PROPOSED DECISIONS

On March 8, 2005, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

These were ALJ proposed decisions submitted to the Board for the first time.

WILLIAM ANDERSON, CASE NO. 03-3359B

Appeal from back pay

CLASSIFICATION: Officer, California Highway Patrol

DEPARTMENT: California Highway Patrol

ACTION: The Board adopted the ALJ's proposed decision sustaining the appeal from back pay.

DEBRA CHANDLER, CASE NO. 04-1879

Appeal from suspension for ten work days

CLASSIFICATION: Parole Agent I

DEPARTMENT: Department of Corrections

ACTION: The Board adopted the ALJ's proposed decision sustaining the suspension for ten work days.

CLETUS CURAH, CASE NO. 04-2146

Appeal from dismissal

CLASSIFICATION: Transportation Engineer

DEPARTMENT: Department of Transportation

ACTION: The Board rejected the ALJ's proposed decision and remanded the matter to the ALJ.

MARIA HOLDREN, CASE NO. 04-1563

Appeal from demotion

CLASSIFICATION: Correctional Case Records Manager

DEPARTMENT: Department of Corrections

ACTION: The Board adopted the ALJ's proposed decision sustaining the demotion.

STEVEN JACKSON, CASE NO. 04-1683

Appeal from ten percent reduction in salary for 12 months

CLASSIFICATION: Parole Agent I

DEPARTMENT: Department of Corrections

ACTION: The Board adopted a special resolution adopting in part the proposed decision sustaining the ten percent reduction in salary for 12 months.

MATTHEW JANNUSCH, CASE NO. 04-2258

Appeal from five percent reduction in salary for three months

CLASSIFICATION: Correctional Officer

DEPARTMENT: Department of Corrections

ACTION: The Board adopted the ALJ's proposed decision sustaining the five percent reduction in salary for three months.

JAMES MCAULEY, CASE NO. 04-1856

Appeal from dismissal

CLASSIFICATION: Associate Transportation Engineer

DEPARTMENT: Department of Transportation

ACTION: The Board rejected the proposed decision and determined to decide the case itself.

SANDRA MORANT, CASE NO. 04-2255

Appeal from dismissal

CLASSIFICATION: Administrative Support Coordinator II

DEPARTMENT: California State University

ACTION: The Board adopted the ALJ's proposed decision sustaining the dismissal.

REBECCA NORTHCUTT, CASE NO. 03-1364

Appeal from five working days suspension

CLASSIFICATION: Community Program Specialist II

DEPARTMENT: Area Development Disabilities Board VII

ACTION: The Board adopted the ALJ's proposed decision sustaining the five working days suspension.

REBECCA NORTHCUTT, CASE NO. 03-1936E

Appeal from reasonable accommodation

CLASSIFICATION: Community Program Specialist II

DEPARTMENT: Area Development Disabilities Board VII

ACTION: The Board adopted the ALJ's proposed decision sustaining the reasonable accommodation.

DANIEL RAMIREZ, CASE NOS. 04-0761E & 04-1509

Appeal from constructive medical termination and
appeal from discrimination on the basis of disability

CLASSIFICATION: Office Assistant (General)

DEPARTMENT: Department of Health Services

ACTION: The Board adopted the ALJ's proposed decision sustaining the constructive medical termination and discrimination on the basis of disability.

ERNEST RAUSCH, CASE NO. 04-2368

Appeal from five percent reduction in salary for three months

CLASSIFICATION: Correctional Officer

DEPARTMENT: Department of Corrections

ACTION: The Board adopted the ALJ's proposed decision sustaining the five percent reduction in salary for three months

SHERRY REEHL, CASE NO. 04-2949

Appeal from dismissal

CLASSIFICATION: Officer, California Highway Patrol

DEPARTMENT: California Highway Patrol

ACTION: The Board adopted the ALJ's proposed decision sustaining the dismissal.

NUBIA REYES, CASE NO. 04-2128

Appeal from five percent reduction in salary for six months

CLASSIFICATION: Psychiatric Technician

DEPARTMENT: Department of Developmental Services

ACTION: The Board adopted the ALJ's proposed decision sustaining the dismissal.

LETICIA RIVERA, CASE NO. 04-1887E

Appeal from denial of reasonable accommodation

CLASSIFICATION: Staff Services Manager I

DEPARTMENT: Department of Health Services

ACTION: The Board adopted the ALJ's proposed decision sustaining the denial of reasonable accommodation.

RICKIE SCHENK, CASE NO. 04-2124

Appeal from five percent reduction in salary for six months

CLASSIFICATION: Correctional Officer

DEPARTMENT: Department of Corrections

ACTION: The Board adopted the ALJ's proposed decision sustaining the five percent reduction in salary for six months.

HARVEY E. WHALEN III, CASE NO. 04-0617

Appeal from dismissal

CLASSIFICATION: Caltrans Heavy Equipment Mechanic

DEPARTMENT: Department of Transportation

ACTION: The Board adopted the ALJ's proposed decision sustaining the dismissal.

Proposed Decisions Taken Under Submission At Prior Meeting

These were ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

NONE

PROPOSED DECISIONS AFTER BOARD REMAND

On March 8, 2005, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

LUIS VALENZUELA, CASE NO. 04-0522

Appeal from dismissal

CLASSIFICATION: Correctional Officer

DEPARTMENT: Department of Corrections

ACTION: The Board adopted the ALJ's proposed decision sustaining the dismissal.

PROPOSED DECISIONS AFTER SPB ARBITRATION

On March 8, 2005, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

BRIAN RENFROW, CASE NO. 04-2396

Appeal from five-day suspension

CLASSIFICATION: Officer, California Highway Patrol

DEPARTMENT: California Highway Patrol

ACTION: The Board adopted the ALJ's proposed decision sustaining the five-day suspension.

E. PETITIONS FOR REHEARING

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

The Board voted to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

On March 8, 2005, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

JOHN HILLEBRECT, CASE NO. 04-1236P

Appeal from reduction in salary

CLASSIFICATION: Construction Inspector II

DEPARTMENT: General Services

ACTION: The Board denied the ALJ's proposed decision sustaining the reduction in salary.

WHISTLEBLOWER NOTICE OF FINDINGS

The Board voted to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

On March 8, 2005, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

GARY TROBEE, CASE NO. 04-1900P

Appeal from Whistleblower Retaliation

CLASSIFICATION: Senior Information Systems Analyst Supervisor

DEPARTMENT: Public Employees Retirement System

ACTION: The Board denied the ALJ's proposed decision sustaining the Whistleblower Retaliation.

F. PENDING BOARD REVIEW

These cases were pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

JACOB ARIS, CASE NO. 04-1378E AND NICHOLAS RUTHART, CASE NO. 04-1409E

Appeal of discrimination complaint

CLASSIFICATION: Employment Program Representatives

DEPARTMENT: Employment Development Department

Proposed decision rejected January 25, 2005

No Action

PATRICK BARBER, CASE NO. 04-0279

Appeal from dismissal

CLASSIFICATION: Youth Correctional Counselor

DEPARTMENT: Department of the Youth Authority

Proposed decision rejected February 3, 2004

No Action

DAVID BARTON, CASE NO. 04-1434

Appeal from dismissal

CLASSIFICATION: Associate Hazardous Materials Specialist

DEPARTMENT: Department of Corrections,
Wasco State Prison – Wasco

Proposed decision rejected January 11, 2005

No Action

ERNEST J. DURAN, CASE NO. 04-0853

Appeal from demotion

CLASSIFICATION: Special Agent in Charge

DEPARTMENT: Department of Justice

Proposed decision rejected January 11, 2005

No Action

CHAD LOOK, CASE NO. 04-1789

Appeal from 60-work-days suspension

CLASSIFICATION: Correctional Officer

DEPARTMENT: Department of Corrections,
Wasco State Prison - Wasco

Proposed decision rejected January 11, 2005

No Action

KIM RITTENHOUSE, CASE NOS. 03-3541A & 03-3542E

Appeal from denial of reasonable accommodation and from constructive
medical termination

CLASSIFICATION: Office Technician (General)

DEPARTMENT: Department of Fish and Game

Proposed decision rejected May 18, 2004

No Action

DARYL STONE, CASE NO. 04-0279

Appeal from dismissal

CLASSIFICATION: Peace Officer I

DEPARTMENT: Department of Developmental Services

Proposed decision rejected February 8, 2005

No Action

ANTHONY VEGAS, Case No. 03-2204A

Appeal from dismissal

CLASSIFICATION: Parole Agent I (Adult Parole)

DEPARTMENT: Department of Corrections – Stockton

Proposed decision rejected November 3, 2004

No Action

21. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board was presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

WITHHOLD FROM CERTIFICATION
CASES HEARD BY A STAFF HEARING OFFICER

NONE

WITHHOLD FROM CERTIFICATION
CASES NOT HEARD BY A STAFF HEARING OFFICER

On March 8, 2005, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

KRISTA EKLUND, CASE NO. 04-0897

CLASSIFICATION: Correctional Officer

DEPARTMENT: Department of Corrections

ISSUE: The appellant furnished inaccurate information and omitted pertinent information about negative law enforcement contacts.

ACTION: The Board adopted the Staff's recommended decision denying the appeal.

STEPHANIE MILLS, CASE NO. 04-0456

CLASSIFICATION: Correctional Officer

DEPARTMENT: Department of Corrections

ISSUE: The appellant was not eligible to carry a firearm at the time of her application for the position.

ACTION: The Board adopted the Staff's recommended decision denying the appeal.

KAO SAECHAO, CASE NO. 04-0809

CLASSIFICATION: Correctional Officer

DEPARTMENT: Department of Corrections

ISSUE: Suitability, omitted pertinent information, negative law enforcement contacts.

ACTION: The Board adopted the Staff's recommended decision denying the appeal.

DAVID SILVA, CASE NO. 04-0807

CLASSIFICATION: Correctional Officer

DEPARTMENT: Department of Corrections

ISSUE: Suitability.

ACTION: The Board adopted the Staff's recommended decision denying the appeal.

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

Cases heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board would have been presented recommendations by a Hearing Panel on each appeal.

NONE

**C. EXAMINATION APPEALS
MINIMUM QUALIFICATIONS
MERIT ISSUE COMPLAINTS**

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board would have been presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

NONE

**D. RULE 211 APPEALS
RULE 212 OUT OF CLASS APPEALS
VOIDED APPOINTMENT APPEALS**

Cases heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board would have been presented recommendations by a Staff Hearing Officer for final decision on each appeal.

NONE

E. REQUEST TO FILE CHARGES CASES

Investigated by Appeals Division staff. The Board was presented recommendations by Appeals Division staff for final decision on each request.

On March 8, 2005, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye.

DEAN DRAKE, CASE NO. 04-0339

CLASSIFICATION: Correctional Officer

DEPARTMENT: Department of Corrections

ISSUE: The charging party requests to file charges under various subsections of Government Code section 19572.

ACTION: The Board adopted the appellant's request to file charges.

PETITIONS FOR REHEARING CASES

NONE

F. PSYCHOLOGICAL SCREENING CASES

Cases reviewed by Appeals Division staff, but no hearing was held. It was anticipated that the Board would have acted on these proposals without a hearing.

NONE

22. NON-HEARING CALENDAR

The following proposals were made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff. It was anticipated that the Board will act on these proposals without a hearing.

Anyone with concerns or opposition to any of these proposals should submit a written notice to the Executive Officer clearly stating the nature of the concern or opposition. Such notice should explain how the issue in dispute is a merit employment matter within the Board's scope of authority as set forth in the State Civil Service Act (Government Code section 18500 et seq.) and Article VII, California Constitution. Matters within the Board's scope of authority include, but are not limited to, personnel selection, employee status, discrimination and affirmative action. Matters outside the Board's scope of authority include, but are not limited to, compensation, employee benefits, position allocation, and organization structure.

Such notice must be received not later than close of business on the Wednesday before the Board meeting at which the proposal is scheduled. Such notice from an exclusive bargaining representative will not be entertained after this deadline, provided the representative has received advance notice of the classification proposal pursuant to the applicable memorandum of understanding. In investigating matters outlined above, the Executive Officer shall act as the Board's authorized representative and recommend the Board either act on the proposals as submitted without a hearing or schedule the items for a hearing, including a staff recommendation on resolution of the merit issues in dispute.

- (a) The California Department of Social Services proposes revisions to the Licensing Program Supervisor and Licensing Program Manager classifications including re-titling of these classes to the Licensing Program Manager I & II; establishment of the class of Licensing Program Manager III with a 12-month probationary period; and reallocation of specified Staff Services Manager II & III incumbents in the Community Care Licensing Program to the classes of Licensing Manager II and III respectively.

ACTION: Adopted

- 23. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE
SECTION 18671.1 EXTENSION**
(See Minutes page 28)

TWO-DAY FULL BOARD MEETING MINUTES⁴

DAY TWO – MARCH 9, 2005

1. ROLL CALL

Members Present:

William Elkins, President
Maeley Tom, Vice President
Anne Sheehan, Member
Sean Harrigan, Member

2. PSC 04-04 – SECRETARY OF STATE (SOS) CONTRACT WITH RENNE & HOLZMAN PUBLIC LAW GROUP

Appeal of the Secretary of State from the Executive Officer's October 15, 2004 disapproval of SOS's contract with Renne & Holtzman Public Law Group upon the review request submitted by the California Attorneys, Administrative Law Judges and Hearing Officers in state employment.

ACTION: Submitted

Speakers present:

Charity Kenyon, representing intervenor
Steve Bassoff, representing the appellant
Pam Giarrizzo, representing the Secretary of state

3. BRIEFING BILINGUAL PROGRAMS – DEBBIE SANTOS-SILVA

State Personnel Board staff presented an overview of the Bilingual Services Program and shared bilingual resources and tools developed to assist state department's compliance with the Dymally-Alatorre Bilingual Services Act. A video, "Language Assistance for Limited-English Proficient (LEP) Persons: Your Responsibilities Under the Dymally-Alatorre Bilingual Services Act" was presented.

Speakers Present:

Debbie Santos-Silva, Staff Services Manager II, State Personnel Board
Juana Lopez-Rodriguez, Staff Services Manager II, State Personnel Board

⁴ The Minutes for the Board can be obtained at the following internet address:
<http://www.spb.ca.gov/calendar.htm>

4. PSC 04-05 - DEPARTMENT OF EDUCATION AND MCGEORGE SCHOOL OF LAW

Appeal of the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment from the Executive Officer's November 17, 2004 Approval of a Contract between California Department of Education and McGeorge School of Law.

ACTION: Submitted

Speakers Present:

Charity Kenyon, representing intervenor
Greg Rousseve, representing the Department of Education
Steve Bassoff, representing the appellant
Dale Mentak, representing the General Public

A D J O U R N M E N T

SUBMITTED

TEACHER STATE HOSPITAL (SEVERELY), ETC.

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

No Action

VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES)

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

No Action

TELEVISION SPECIALIST (SAFETY)

The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003.)

No Action

HEARING - PSC #04-03

Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief. (Hearing held August 12, 2004.)

No Action

HEARING

Proposed new and revised State Personnel Board Regulations effecting equal opportunity, discrimination complaints and reasonable accommodation policies and procedures. (Hearing held July 7, 2004.)

No Action

NOTICE OF GOVERNMENT CODE SECTION 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE SECTION 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code section 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on March 8-9, 2005.

VOTE: Tom, Sheehan, Harrigan – Aye

A handwritten signature in black ink, reading "Floyd D. Shimomura". The signature is written in a cursive, flowing style with a long horizontal line extending from the end.

FLOYD D. SHIMOMURA
Executive Officer
California State Personnel Board